

Subpart C—Conversion of Foreign Currency

§ 159.31 Rates to be used.

Except as otherwise specified in this subpart, no rate or rates of exchange shall be used to convert foreign currency for Customs purposes other than a proclaimed rate or certified rate or rates.

§ 159.32 Date of exportation.

The date of exportation for currency conversion shall be fixed in accordance with § 152.1(c) of this chapter.

§ 159.33 Proclaimed rate.

If a rate of exchange has been proclaimed by the Secretary of the Treasury in accordance with 31 U.S.C. 5151(b) for the currency involved, such proclaimed rate shall be used unless it varies by 5 percent or more from the certified daily rate for the date of exportation as set forth in § 159.35. In determining the percentage of variation between the proclaimed rate and the certified rate, the difference between the two rates shall be divided by the certified rate.

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 97-82, 62 FR 51771, Oct. 3, 1997]

§ 159.34 Certified quarterly rate.

(a) *Countries for which quarterly rate is certified.* For the currency of each of the following foreign countries, there will be published in the Customs Bulletin, for the quarter beginning January 1, and for each quarter thereafter, the rate or rates first certified by the Federal Reserve Bank of New York for such foreign currency for a day in that quarter:

Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Hong Kong, India, Iran, Ireland, Italy, Japan, Malaysia, Mexico, Netherlands, New Zealand, Norway, People's Republic of China, Philippines, Portugal, Republic of South Africa, Singapore, Spain, Sri Lanka (Ceylon), Sweden, Switzerland, Thailand, United Kingdom, Venezuela.

(b) *When certified quarterly rate is used.* The certified quarterly rate established under paragraph (a) of this section shall be used for Customs purposes

for any date of exportation within the quarter, except in the following cases:

(1) *Proclaimed rate.* If a rate has been proclaimed by the Secretary of the Treasury under § 159.33 which does not vary by 5 percent or more from the appropriate certified daily rate, notice of such variance shall be published in the Customs Bulletin and the proclaimed rate shall be used for Customs purposes in connection with merchandise exported on such date.

(2) *Certified daily rate.* If the certified daily rate for the date of exportation varies by 5 percent or more from the certified quarterly rate, notice of such variation and the rate or rates certified for such day shall be published in the Customs Bulletin, and such certified daily rate shall be used for Customs purposes in connection with merchandise exported on such day.

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 81-117, 46 FR 24944, May 4, 1981]

§ 159.35 Certified daily rate.

The daily buying rate of foreign currency which is determined by the Federal Reserve Bank of New York and certified to the Secretary of the Treasury in accordance with 31 U.S.C. 5151(e) shall be used for the conversion of foreign currency whenever a proclaimed rate or certified quarterly rate is not applicable under the provisions of §§ 159.33 and 159.34. If the date of exportation is one on which banks are generally closed in New York City, then the certified daily rate for the last preceding business day shall be considered the certified daily rate for the day of exportation.

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 97-82, 62 FR 51771, Oct. 3, 1997]

§ 159.36 Multiple certified rates.

The following procedures shall apply when the Federal Reserve Bank of New York certifies two or more rates of exchange (e.g., official and free) for a foreign currency:

(a) *Rates to be published.* When the Federal Reserve Bank of New York certifies two or more rates of exchange for the currency of any country, those

rates will be published in the Customs Bulletin.

(b) *Laws of country of exportation followed.* When multiple rates have been certified for a foreign currency, the rate to be used for Customs purposes shall be the type of certified rate which the port director is satisfied, from information in his own files, information obtained and presented to him by the importer, or information obtained from other sources, is uniformly applicable under the laws and regulations of the country of exportation to the particular class of merchandise on the date of exportation. In cases where two or more types of certified rates are uniformly applicable on a percentage bases, each type of certified rate shall be used for the percentage of value to which it is applicable. The percentages used shall be those which reflect realistically the percentage for which each type of rate is uniformly applicable under the laws and regulations of the country of exportation on the date of exportation.

(c) *Procedure when multiple certified rates not uniformly applicable.* If the port director has credible information that a type of rate or combination of types of rates which would otherwise be applicable under paragraph (b) of this section were not required or permitted, as the case may be, under the laws and regulations of the country of exportation to be used uniformly during any period in connection with the payment for all merchandise of the class involved, he shall immediately submit a detailed report to the Commissioner of Customs, and shall suspend appraisement and liquidation as to all merchandise of the class involved exported to the United States during the period involved, until instructions are received from the Commissioner of Customs.

(d) *Rate for merchandise different from rate for costs.* If the port director has credible information that a type of rate or combination of types of rates not applicable to payment for the merchandise was required or permitted in payment of costs, charges, or expenses, the currency conversions for the exchange covering payment for the merchandise and for the exchange covering such costs, charges, or expenses shall

be calculated separately. In deducting nondutiable costs, charges, or expenses, the foreign exchange shall be at the rate or rates actually used in payment of such costs, charges, or expenses, whether or not certified in accordance with § 159.34 or § 159.35. If the costs, charges or expenses are dutiable, they shall be calculated according to the rules set forth in this subpart. In the event that any type of rate uniformly applicable to payment of such dutiable costs, charges, or expenses for merchandise of the class involved was a type of rate not certified in accordance with § 159.34 or § 159.35, the port director shall immediately submit a detailed report to the Commissioner of Customs, and shall suspend appraisement and liquidation as to all merchandise of the class involved exported to the United States during the period involved, until instructions are received from the Commissioner.

§ 159.37 Suspension of certification of rates.

Whenever the Federal Reserve Bank of New York advises that its certification of rates for a currency is being suspended pending determination of the question whether it will certify multiple rates for that currency, the following procedures shall apply:

(a) *Notification of suspension.* Customs field officers will be informed when certification of a currency is being suspended. Currency information received from the Federal Reserve Bank, or otherwise available, which might be helpful in calculating estimated duties during the period of suspension will be furnished to the Customs field officers.

(b) *Suspension of liquidation.* In any case where for the purposes of the assessment and collection of duties it is necessary to determine the proper rate or rates for a currency during the period when it has been suspended from certification, appraisement and liquidation shall be suspended until resumption of certification.

(c) *Resumption of certification.* When certification is resumed by the Federal Reserve Bank, the procedures in § 159.36 shall apply.